Post-socialist “illiberal democracies”: do *de jure* constitutional rights matter?

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Abstract

Are *de jure* constitutional rules significant for constitutional practice? We pose this question with regard to *de jure* and *de facto* protection of constitutional rights in post-socialist countries of Europe and Asia. While, after 1989, these countries enacted broad catalogues of rights and freedoms, they are by now often regarded as electoral, not liberal democracies, i.e. they generally allow for political competition and fair elections but witness considerable violations in civil and minority rights. We use various econometric techniques to determine whether, and under what conditions, *de jure* rights originating from texts of post-socialist constitutions matter for *de facto* protection of rights in these countries. Our results reveal no such significant unconditional effect, with the exception of freedom of assembly/association. We do, however, find a positive significant effect conditional on judicial independence, democratization level, and robustness of civil society. The conclusions allow to propose guidelines for post-socialist legislators and bring a contribution to the broader debate on the role of *de jure* constitutional rules for their *de facto* equivalents, which has so far been essentially inconclusive.

Keywords Constitutional economics · Constitutional rights · *De jure* and *de facto* constitutions · Constitutional underperformance · Post-socialist transition · Illiberal democracy

JEL Classification K19 · K38 · K42 · P26 · P37

1 Introduction

Economic literature interested in constitutions and constitutional change systematically confirms the significance of constitutional frameworks for policy decisions and various economic outcomes (see surveys by Voigt 2011, 2020a). However,

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these studies seldom focus on constitutional provisions as they have been formally laid down in constitution texts (i.e. *de jure* constitutions) but rather on the actual functioning of constitutional rules—the so-called *de facto* constitutions. In fact, the conclusions of a handful of studies pertaining to the direct economic relevance of formal constitutional rules are, at best, ambiguous (e.g. Bjoernskov 2015—referring to property rights protection; Metelska-Szaniawska 2016; Gutmann and Voigt 2018—with reference to constitutional court, and more generally, judicial independence; Chilton and Versteeg 2017; Bjoernskov and Mchangama 2019—with regard to *de jure* protection of social rights). Recently, the discrepancy between *de jure* and *de facto* constitutions also became the focus of studies in this field, relating in particular to the so-called constitutional underperformance (Law and Versteeg 2013) or *de jure–de facto* constitutional gap (Metelska-Szaniawska 2020; Voigt 2020b). If, based on these studies, one aims at formulating recommendations with regard to desired constitutional change, the crucial question concerns whether and, if so then to what extent, the text of the constitution actually impacts constitutional practice. If such impact is confirmed, one can speak of indirect relevance of *de jure* constitutions for policy decisions and economic outcomes, even if, as argued above, their direct effects may be questionable. In this paper we pose such question with regard to the protection of civil rights in post-socialist countries of Europe and Asia,¹ i.e. we aim to determine whether, and under what conditions, *de jure* rights originating from texts of post-socialist constitutions matter for *de facto* protection of rights in these countries.

Pre-1989 communist (or socialist) constitutions constituted typical examples of window-dressing (e.g. Sakwa 1993; Ludwikowski 1996), resulting in particularly large gaps between *de jure* and *de facto* protection of various categories of rights and freedoms. The fall of communism in Central and Eastern Europe in 1989, and later in former Soviet republics, as well as the transition of their political systems towards democracy that followed, marked an important contribution to the so-called third wave of democratization (Huntington 1991). These events can also be regarded as a certain turning point in history, since which more countries in the world qualify as democracies than non-democracies (Marshall et al. 2014). To allow for systemic changes that occurred after 1989, these states faced the need to introduce new constitutional frameworks. In fact, the adoption of post-socialist constitutions took place in the period 1990–2011, with greatest intensity between 1990 and 1996.² Breaking with their pre-1989 past, these constitutions generally envisaged

¹ These are: countries of Central and Eastern Europe (Albania, Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia); former Yugoslavian republics (Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, Serbia, Slovenia); and former Soviet republics (Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan).

² All countries except Hungary and Latvia introduced at least a provisional constitution in this period. Hungary operated on the basis of its numerously amended 1949 constitution throughout most of transition, adopting a new constitution as late as in 2011. Latvia returned in 1991 to its 1922 constitution (with significant amendments). This unprecedented time of broad-scale constitutional change has sometimes been called a “gigantic natural experiment” (Elster 1993, p. 449).

broad, unambiguously worded catalogues of rights and freedoms that are directly enforceable and binding upon all state institutions and ensured their supremacy over legislation by a system of judicial (constitutional) review (Sadurski 2002). Nevertheless, more and more often recent political economy literature raises the point that democracies, which developed in post-socialist countries of Europe and Asia are, in fact, electoral not liberal democracies, i.e. they allow for political competition and, in principle, fair elections but witness considerable violations in civil rights of various minorities and groups which are not in power (Mukand and Rodrik 2020). Our earlier studies of the *de jure*–*de facto* constitutional gap in the area of rights and freedoms for this group of countries also confirm that, except for a handful of results for Estonia and Moldova in the very first years of transition, all post-socialist states demonstrate positive *de jure*–*de facto* gaps, indicating that constitutional practice diverges from the formal rules concerning protection of rights and freedoms laid down in post-socialist constitutions (Metelska-Szaniawska 2020). This additionally motivates the question whether *de jure* rights originating from the texts of post-socialist constitutions matter at all for *de facto* protection of rights in these countries, and if so, then what the conditions for this effect are.

Protection of constitutional rights and freedoms is an area where discrepancy between *de jure* and *de facto* constitutions is particularly apparent and the relevance of constitutional text for constitutional practice has already received some attention (see e.g. Davenport 1996; Keith 2002, 2012; Keith et al. 2009; Fox and Flores 2009). Most of these studies suggest that structural provisions, such as e.g. judicial independence, are more effective in constraining governments than *de jure* rights and freedoms, regarded as not much more than merely parchment barriers. More recent studies reveal, however, several limitations and caveats of these early approaches and bring forward evidence of at least partial or conditional relevance of *de jure* constitutional rights provisions for *de facto* protection of these rights. Melton (2013) suggests, for example, that while entrenching freedom of religion, freedom of the press, and the prohibition of torture in the constitution does not improve the likelihood of observing that right/freedom in practice (in fact, in certain situations, entrenchment might increase the violation of these rights/freedoms), constitutional entrenchment does significantly improve *de facto* protection of freedom of association, freedom of expression, and freedom of movement (under a variety of conditions, the most important of which is the functioning of an independent judiciary). Most recently, Chilton and Versteeg (2016) suggest that the effectiveness of *de jure* political rights depends on the type of rights in question: rights that establish organizations with the incentives and means to protect them (called “organizational rights”, e.g. the right to establish a political party or to unionize) are self-enforcing and therefore more effective than rights that do not establish such organizations (“individual rights”, e.g. freedom of expression, freedom of movement). Our contribution links this theoretical and empirical constitutional economics literature with recent cross-disciplinary studies on illiberal democracies, problems of rights enforcement, constitutional underperformance and the constitutional *de jure*–*de facto* gaps in post-socialist countries. The results reveal no significant unconditional effect of *de jure* rights originating from the texts of post-socialist constitutions for *de facto* protection of rights in these countries, with the exception of freedom of

assembly/association—the “most organizational” right in our sample. The data do, however, confirm significant conditional effects.

The paper is structured as follows. In Sect. 2 we provide background information on *de jure* and *de facto* protection of constitutional rights and freedoms in post-socialist countries of Europe and Asia. Section 3 reviews the relevant literature—both theoretical and empirical. Based on this literature, in Sect. 4 we construct our empirical model aiming to test the relevance of *de jure* constitutional rules for their *de facto* equivalents and discuss the employed econometric techniques. Section 5 presents the results pertaining to direct and conditional effects, both for aggregate measures of rights protection, as well as with regard to individual rights. The paper finishes with conclusions.

2 Constitutional rights and freedoms in post-socialist countries

Post-socialist countries did not develop a common constitutional model and this also relates to constitutional catalogues of rights and freedoms. All currently operative post-socialist constitutions contain a separate section devoted to rights and freedoms provisions, however even with regard to such crude indication as the length of this section they vary considerably: Bosnia and Herzegovina (549 words), Latvia (965 words), and Lithuania (1233 words) place at one extreme, while Romania (4082 words), Ukraine (4192 words) and Serbia’s 2006 Constitution (5580 words) on the other (Elkins et al. 2014). A special case in this respect is the Czech Republic, where rights and freedoms are encompassed by a separate document (the Charter of Fundamental Rights and Basic Freedoms) attached to the constitution.

Data gathered by Elkins et al. (2014) allow to identify 117 different constitutional rights present in constitutions of the world since 1789, 35 of which are categorized as civil and political rights, while 28 as minority rights.³ Based on a subset of this data for post-socialist countries, in Table 1 we present a very general picture of the *de jure* protection of rights and freedoms in constitutions of these states, focusing, in particular, on civil and political rights, as well as minority rights.⁴ Overall, post-socialist countries constitutionalize on average ca. 50 rights, with the constitutions of Serbia (69 rights) and Armenia (67 rights) being most protective in this respect and constitutions of Bosnia and Herzegovina (25 rights) and Latvia (32 rights) on the other extreme. The variation between constitutions, as measured roughly by the

³ According to calculations by Ginsburg and Melton (2015), five of these rights and freedoms were present in more than 90% constitutions of the world in 2010: the general guarantee of equality, freedom of expression, freedom of assembly, freedom of association, and freedom of religion.

⁴ The numbers that we obtain for different types of rights for post-socialist countries based on Elkins et al.’s (2014) database, which are discussed in this section and presented in Table 1, differ from the overall numbers of rights for these countries published recently in the ‘CCP Rankings’ on the website of Elkins et al.’s Comparative Constitutions Project (<http://comparativeconstitutionsproject.org/ccp-rankings/>). These discrepancies are due to different approaches used in classifying certain constitutional provisions as rights. Even with the specific numbers diverging, the main lines of conclusions from the discussion presented in this section and in Table 1 remain valid for both approaches.

Table 1 *De jure* protection of rights and freedoms in post-socialist constitutions (as of 2013). *Source:* Own elaboration on the basis of Elkins et al. (2014)

Country	Overall rights and freedoms	Political rights and civil liberties	Legal process rights	Social and economic rights	Minority rights and anti-discrimination
Albania	58	17	10	21	10
Armenia	67	18	10	27	12
Azerbaijan	56	17	8	23	8
Belarus	47	17	5	23	2
Bosnia and Herzegovina	25	10	1	5	9
Bulgaria	53	17	6	23	7
Croatia (2009)	51	16	10	16	9
Czech Republic (2008)	48	16	8	15	9
Estonia	53	17	9	17	10
Georgia (2004)	53	17	9	18	9
Hungary	51	15	7	20	9
Kazakhstan (2006)	46	15	7	15	9
Kyrgyzstan	52	17	9	20	6
Latvia	32	14	3	15	0
Lithuania	52	17	7	21	7
Moldova	52	17	5	23	7
Montenegro	59	17	12	23	7
North Macedonia	51	16	9	16	10
Poland	49	19	8	21	1
Romania	52	18	9	20	5
Russia	54	18	10	20	6
Serbia	59	18	10	20	11
Slovakia (2003)	57	18	10	20	9
Slovenia	52	17	7	21	7
Tajikistan	47	15	6	19	7
Turkmenistan (2005)	57	18	9	24	6
Ukraine	45	18	2	18	7
Uzbekistan (1992)	69	19	14	25	11
Mean	51.7	16.7	7.9	19.6	7.5
Median	52	17	8.5	20	7.5
Max	69	19	14	27	12
Min	25	10	1	5	0
Standard deviation	8.5	1.7	2.8	4.2	2.8

For countries, for which data for 2013 were not available, the most recent year is taken into account and reported in brackets next to the country name

standard deviation, is noticeable (8.5), however drops below 4 when one removes the 4 extreme cases mentioned above from the sample. The smallest variation is encountered for the category of our interest in this paper—i.e. political rights and civil liberties, where nearly all countries score between 14 and 19 (mean=16.7, standard deviation=1.7), with the sole exception of Bosnia and Herzegovina, which protects 12 such rights in the constitution. More differences are observed for the remaining categories (the largest ones—for social and economic rights). Minority rights (mean=7.5, standard deviation=2.8), together with anti-discrimination measures contained by the discussed constitutions, are most pronounced for such countries as Armenia (12 rights), Serbia and Slovakia (11 rights), while in a few other constitutions they are hardly mentioned—Belarus (2 rights), Poland (1 right), Kyrgyzstan (0).

The practical operation of provisions regarding constitutional rights differs more significantly amongst the discussed countries. Information about *de facto* protection of rights and freedoms is available from several databases, in particular the CIRI Human Rights Data Project (Cingranelli et al. 2014) and Freedom House's *Freedom in the World* and *Freedom of the Press* rankings (Freedom House 2017, 2019). The CIRI database contains quantitative information on government respect for 15 internationally recognized human rights for 202 countries, annually from 1981 to 2011. They include: (1) physical integrity rights with data on disappearances, extra-judicial killings, political imprisonment, and torture; (3) empowerment rights, such as freedom of assembly and association, freedom of domestic movement, freedom of foreign movement, freedom of speech, electoral self-determination, freedom of religion, and workers' rights; as well as (3) women's economic, social and political rights.⁵ Post-socialist countries generally place in the middle of the global CIRI rankings. Table 8 in the Appendix reveals aggregate scores for each category of rights included in this database—personal integrity rights (PIR), empowerment rights (EMPR), and women's rights (WR)—for all post-socialist countries (and the overall post-socialist averages) for the years 1981, 1990, 2000, and 2011 (the last year for which it is available). For the sake of clarity we normalize the obtained indicators to take values from the interval [0,1] with higher values corresponding to more respect for rights. The remaining columns of Table 8 present post-socialist countries' scores on Freedom House's political rights (PR), civil liberties (CL), and freedom of the press (FP) indicators for similar moments in time as well as in the last year for which this data (on the FP indicator, specifically) are available—2017 (normalized according to the same procedure as above⁶). The political rights ranking

⁵ Generally, scores for each of these rights take values of 0 (frequently reported violations), 1 (occasional violations), or 2 (no violations, i.e. full government respect for a given right). For women's rights the scale is extended from [0, 1, 2] to [0, 1, 2, 3]. Admittedly, these scores are based on expert coding, what constitutes the most serious weakness of the CIRI database, however the latter is still regarded as one of the best sources available for quantitative data on human-rights practices and is broadly used by authors of constitutional economics studies.

⁶ For the years 1980 and 1990 the FP indicators do not take numerical values but are only available as free/partially free/not free classification (f/pf/nf). For Poland in 1980 the classification for print media is partially free, while for broadcast—not free, therefore this country's overall score for that year in Table 8 is pf/nf.

is based on a checklist including the electoral process, political pluralism and participation; the civil liberties indicator encompasses freedom of expression and belief, associational and organizational rights, the rule of law, personal autonomy, and individual rights; while freedom of the press indicator relates to three components—the legal environment, the degree of political influence in the content of news media, and the economic environment for the media. All measures presented in Table 8 generally exhibit considerable increases since 1980/1981, however: this is certainly not a constantly upward trend (in particular, indicators for political rights and civil liberties drop in 2017); there are considerable differences between categories of rights and among countries; and, most visibly, the scores for all categories of rights, generally significantly different from 1, demonstrate noticeable disrespect for rights and freedoms in the post-socialist countries during the included period.

In an earlier study focusing on the size and evolution of the gap between *de jure* and *de facto* protection of a selection of civil and political (constitutional) rights in post-socialist countries (Metelska-Szaniawska 2020)⁷ we revealed that the gap takes highest values for Russia, Uzbekistan, Tajikistan and Azerbaijan. Countries such as Armenia, Kyrgyzstan, Belarus, and Turkmenistan follow with a generally increasing trend (they experience a larger gap recently than they did at the outset of transition). Serbia demonstrates highest values of the gap for early years of transition, however experiences a considerable decrease (by half) later, what is likely to be explained by the turbulent history in the area during the 1990's. Countries with relatively lowest values of the gap are Estonia, Slovenia, Bosnia and Herzegovina (since 2005), as well as Moldova (however, the latter with an increasing trend).

In a different approach to this topic, Law and Versteeg (2013) propose a measure of constitutional underperformance revealing the extent to which countries promising a relatively broad catalogue of rights *de jure* in their constitutions succeed at upholding those rights in practice. Each country's underperformance score provides the proportion of the total number of rights in its constitution that was actually respected, i.e. 0 indicates that the country seriously violated all of the rights included its constitution, while 1 indicates perfect respect of all the rights included in the constitution. Table 2 presents a subset of this data for post-socialist countries of Europe and Asia in the area of personal integrity rights, civil and political freedoms, socio-economic and group rights, as well as their overall scores.⁸

⁷ They are: freedom of movement, freedom of association, freedom of expression, freedom of the press, freedom of religion, prohibition of torture, and the right to habeas corpus. The gap involves subtracting *de facto* indicators from *de jure* ones.

⁸ Law and Versteeg's (2013) analysis involves a representative sample of rights from each of these three categories constrained by the necessity of choosing *de jure* rights for which corresponding *de facto* compliance data could be found. As a result, their study includes the following 15 rights: prohibition of arbitrary arrest and/or detention, prohibition of torture, right to *habeas corpus*, fair trial rights, prohibition of death penalty (falling within the category of personal integrity rights); freedom of assembly and/or association, freedom of movement, freedom of religion, right to vote, freedom of the press and/or expression (civil and political freedoms); right to health, right to education, gender equality in marriage, gender equality in labor relations, general protection of minority rights or right of minorities to be represented in government (socio-economic and group rights).

The data presented in Table 2 allow to determine the types of post-socialist constitutions with regard to protection of rights and freedoms and, in particular, to distinguish between countries with strong constitutions and those with sham constitutions.⁹ Specifically, of the 26 post-socialist constitutions for which data are available¹⁰ 18 are strong constitutions, while 6 are sham constitutions. Countries with the highest underperformance scores (i.e. most respect for rights in their constitutions) are Slovenia (#3 ‘strongest’ constitution of the world according to Law and Versteeg 2013¹¹), the Czech Republic (#4 in the above classification) and Estonia. On the other extreme one will find Russia (#5 ‘worst sham’ constitution in the world according to Law and Versteeg 2013), as well as the remaining post-socialist countries with sham constitutions—Uzbekistan, Tajikistan, Turkmenistan, Belarus, and Azerbaijan. It is noticeable that most ‘disrespect’ for the constitution is found in the area of civil and political freedoms, where countries with sham constitutions such as Russia, Uzbekistan and Turkmenistan score 0.¹²

To sum up, *de jure* catalogues of constitutional rights are relatively well-developed in post-socialist countries and they do not vary greatly between these states. Differences are the smallest in the area of political and civil rights and the most noticeable for minority rights. *De facto* protection of constitutional rights, in turn, varies most in post-socialist countries in the area of political and civil rights, therefore, determinants of this divergence constitute the subject of further considerations in this paper.

⁹ To be specific, a country is identified as having a strong constitution if its constitution contains at least 10 of the 15 rights listed in the preceding footnote and it respects more than half of the promised rights. Conversely, a country is classified as having a sham constitution if it promises at least 10 of those 15 rights but respects half or fewer of these promised rights (Law and Versteeg 2013, p. 885).

¹⁰ Data for Serbia and Montenegro have not been assembled by Law and Versteeg (2013).

¹¹ This classification ranks all countries according to their underperformance scores, taking also into account the scope of their success or failure. As the authors explain, “[t]he more rights that a country promises in its constitution, the more impressive it becomes to fulfill every promise; conversely, the more promises that a country breaks, the more sweeping its failure” (Law and Versteeg 2013, p. 898). Therefore, in case of identical underperformance scores countries are ranked according to the number of rights promised in their constitutions. This is the reason why Slovenia is ranked #3 and the Czech Republic #4, even though the underperformance scores are 0.962 for both (Slovenia, however, includes 14 of the 15 studied rights in its constitution, while the Czech Republic—13 rights).

¹² Two post-socialist constitutions fall short of the classification of strong and sham constitutions, i.e. they include less than 10 of the 15 rights enumerated in footnote 8 in their constitutions. Their type can be determined based on the so-called constitutional overperformance scores, which measure the extent to which countries respect rights that are *not* found in their constitutions. This measure enables to distinguish between countries with modest constitutions (which promise few rights *de jure* but respect many *de facto*), and countries with weak constitutions (where protection for rights is low both on paper and in practice). Among post-socialist countries Bosnia and Herzegovina has a modest constitution (in fact, the #5 ‘most modest’ constitution in the world according to Law and Versteeg 2013), while Kazakhstan has a weak constitution (#3 weakest constitution in the world according to Law and Versteeg 2013).

Table 2 Constitutional underperformance in post-socialist constitutions. *Source:* Own elaboration on the basis of Law and Versteeg (2013, appendix II)

Country	Constitution type	GP	NP	Constitutional underperformance					
				FU	PU	Personal integrity rights	Civil and political freedoms	Socioeconomic and group rights	Overall score
Albania	Strong	12	12	6	6	0.750	0.800	0.667	0.750
Armenia	Strong	14	13	6	2	0.600	0.400	0.667	0.538
Azerbaijan	Sham	13	13	4	4	0.500	0.300	0.625	0.462
Belarus	Sham	14	14	3	5	0.375	0.200	0.600	0.393
Bosnia and Herzegovina	Modest	7	6	3	2	0.500	0.750	–	0.667
Bulgaria	Strong	12	12	6	6	0.625	0.800	0.833	0.750
Croatia	Strong	13	13	7	5	0.800	0.700	0.667	0.731
Czech Republic	Strong	13	13	12	1	1.000	0.900	1.000	0.962
Estonia	Strong	13	13	11	2	0.875	1.000	0.875	0.923
Georgia	Strong	12	12	4	6	0.375	0.700	0.667	0.583
Hungary	Strong	12	12	9	2	0.750	0.900	0.833	0.833
Kazakhstan	Weak	6	6	3	0	1.000	0.250	1.000	0.500
Kyrgyzstan	Strong	12	12	4	5	0.600	0.400	0.750	0.542
Latvia	Strong	10	10	6	4	0.833	0.700	1.000	0.800
Lithuania	Strong	13	13	8	5	0.875	0.700	0.875	0.808
Moldova	Strong	13	12	6	4	0.700	0.600	0.750	0.667
North Macedonia	Strong	13	13	8	5	0.900	0.800	0.667	0.808
Poland	Strong	13	12	9	2	0.875	0.900	0.667	0.833
Romania	Strong	15	15	6	6	0.700	0.500	0.600	0.600
Russia	Sham	12	12	2	2	0.125	0.000	0.833	0.250
Slovakia	Strong	13	13	10	3	0.900	0.800	1.000	0.885
Slovenia	Strong	14	13	12	1	0.900	1.000	1.000	0.962
Tajikistan	Sham	12	12	3	3	0.500	0.200	0.500	0.375
Turkmenistan	Sham	13	13	4	2	0.700	0.000	0.500	0.385
Ukraine	Strong	14	14	5	6	0.500	0.700	0.500	0.571
Uzbekistan	Sham	13	13	3	2	0.625	0.000	0.325	0.308

GP gross number of rights promised in the constitution, *NP* net number of rights promised for which *de facto* performance data is available, *FU* number of rights in the constitution that were fully upheld, *PU* number of rights in the constitution that were partially upheld

3 Literature review

Given the main focus of this paper, i.e. determining whether *de jure* protection of constitutional (civil) rights impacted constitutional practice in this area in post-socialist countries of Europe and Asia, in this section we present, in a nutshell, the theoretical background for analysis of relationships between *de jure* and *de facto*

constitutional rules and review the empirical literature that has recently developed with regard to this question. We also reflect on the relevant peculiarities of post-socialist countries' constitutional framework.

3.1 Theoretical background

Laws constitute a normative system, usually constructed by legislators in order to develop social interactions (Chauvin et al. 2011). Without respect for the law, the entire social system does not work properly, failing to protect universal values and needs. The problem of respecting the law is inevitably linked with the sphere of validity of legal regulations. In this paper, we undertake a realistic approach and treat the law as valid when a significant share of legal norms' addressees behave in line with these norms (Chauvin et al. 2011). In other words, the law is valid when it is regularly applied and respected.

Interrelations between *de jure* and *de facto* rules or institutions constitute a rather recent topic in economic literature. A connected problem that has already been thoroughly studied is that of interrelations between formal and informal rules/institutions (or, put differently, between the law and social norms).¹³ A *de jure* institution is a state of affairs that is in accordance with the law, while a *de facto* institution is a state of affairs which is true in fact, but does not have to be officially sanctioned (Lewkowicz and Metelska-Szaniawska 2016). Therefore, *de jure* institutions are a subclass of formal institutions and are external in nature (in exceptional cases external and internal simultaneously), while *de facto* institutions could be both informal or formal and both internal or external, provided that they are operative.¹⁴ Identifying *de facto* institutions may be troublesome and, to a certain degree, discretionary, as it is often impossible to mark the precise point distinguishing operative and non-operative institutions. *De jure* institutions, that are not enforced and not observed, cannot be classified as *de facto* institutions.

There exist different types and structures of interactions between *de jure* and *de facto* institutions. *De facto* and *de jure* institutions boost each other when they lead to commonly desired behavior, while they inhibit each other when they create incentives leading to different/contrary decisions (Lewkowicz and

¹³ According to much of this literature, it is not possible to understand the functioning of the law without reference to social norms, which interact with the legal system (e.g. Posner 1997). The following possible relations have been discussed: (1) formal and informal rules are complements (e.g. Baker et al. 1994; Lazzarini et al. 2004); (2) formal rules are substitutes for social norms and it is possible for societies to function based on informal rules, without the need to establish costly *de jure* rules (Macaulay 1963; Ellickson 1991; Huang and Wu 1994); (3) formal rules are substitutes for informal rules and introduction of the former undermines or even destroys the functioning of social norms (e.g. Frey and Oberholzer-Gee 1997; Fehr and Gächter 2001); (4) depending on the particular context and conditions, formal and informal rules are complements or substitutes (e.g. Posner 2000; Zasu 2007).

¹⁴ We refer here to the internal/external classification as proposed by Voigt (2013), i.e. based on the underlying enforcement mechanism (when sanctioning is privately organized by members of the group or society within which a given institution functions, the institution is internal, while when sanctioning is public—it is classified as external). For more on *de jure/de facto* institutions versus other classifications of institutions see Lewkowicz and Metelska-Szaniawska (2016).

Metelska-Szaniawska 2016). In this paper, we are interested in a subset of such interactions, namely cases when *de jure* constitutional provisions impact (or not) *de facto* constitutional practice and this in the area of rights protection. With regard to this specific topic an important strand of (mainly) political science literature has developed, focusing on the question whether the constitution imposes significant constraints on those in power and establishes rules, according to which the political game is played within states, or accounts to no more than *parchment barriers* (see more in Levinson 2011). Other authors argue that constitutional solutions work provided that they are self-enforcing, i.e. it is not necessary that an external actor supervises the execution of a bargain (see e.g. Ordeshook 1992; Weingast 1997). Constitutional provisions written on paper and publicly available contribute to the constitutional self-enforcement mechanism thanks to providing a focal point, around which various actors may concentrate their enforcement efforts (Carey 2000; Elkins et al. 2009). Additionally, parchment may lead to creation of mutual expectations among political actors and it is essential for *de facto* functioning of institutions (Carey 2000). Constitutional provisions may, therefore, serve as underpinnings for *de jure* institutions at the post-constitutional level enhancing their operation in social practice. Effects of adopting constitutional provisions may, however, be only visible after a long period (Keith et al. 2009). In this perspective, writing down certain rules may contribute to their strength and binding force.

When investigating the relevance of *de jure* constitutional text for *de facto* constitutional practice in the field of respect for rights and freedoms, the issue of enforcement is of particular relevance. Economic literature pertaining to state repression, inspired by the rational choice approach, argues that governments decide to repress rights when their benefits from this option exceed the costs (Davenport 2007a). *De jure* rights may play a role in this calculus as long as they increase the government's expected cost of punishment for repressing rights (Melton 2013). Then, if the constitution is *de facto* enforced, this increases the likelihood of punishment for breaking constitutional rules, what, in turn, deters repression.

With regard to constitutional rights and freedoms several enforcement mechanisms may be at play. Firstly, there are types of rights and freedoms that have the potential to be self-enforcing. Self-enforcement mechanisms create a positive inter-relationship between *de jure* and *de facto* constitutional rules (Melton 2013). This is, in particular, the case when rights involve setting up organizations, which have the incentives and adequate means to guard and protect them (Chilton and Versteeg 2016). The latter authors provide evidence that such “organizational rights” are indeed associated with increased *de facto* rights protection (as opposed to “individual rights” which do not have this feature of self-enforcement).

Secondly, enforcement of rights and freedoms may be guaranteed by an independent judiciary—an institutional solution to the dilemma of a strong state (Feld and Voigt 2003; Voigt et al. 2015). An independent judiciary is an actor that does not have incentives to breach the constitution and, at the same time, has sufficient power to prevent the government from transgressing the constitution. In such a setting *de jure* rights may also become self-enforcing as governments fearing punishment by

(an independent) judiciary will refrain from transgressing the rights set forth in the constitution (Weingast 1997), rendering them *de facto* operative.

Finally, a third type of enforcement mechanism to be considered in our context is electoral enforcement, which might overtake the role of organizations or the judiciary (Davenport 2007a) and assure that *de facto* protection of constitutional rights does not diverge significantly from *de jure* content of constitutions in this area. This mechanism, consisting in citizens voting governments, that repress rights, out in subsequent elections, is a particular feature of democratic regimes. This is one of the reasons why the chances of *de jure* rights being *de facto* enforced are considerably higher in democratic than in autocratic systems. Democratic governments also tend to have less incentives to repress rights from the beginning (Davenport 2007b). Although a specific situation may occur when the majority of the society is willing to break the existing laws, we perceive such a situation as rare and unique, probably caused by groundless legislation or populism.

Melton (2013) emphasizes that the existing literature on *de facto* enforcement of international human rights treaties already suggests that judicial independence and regime type are important conditions of the effectiveness of these treaties (e.g. Simmons 2009; Hafner-Burton et al. 2011). Another suggestion stemming from these works is that with regard to domestic enforcement of constitutional rights and freedoms, political conflict should also be considered. Firstly, in conflict settings the government may be transgressing the constitution to protect national security and if conflict is severe enough, this may be done by the government even if it is certain to be punished for doing so (Melton 2013). This is the reason why even in democracies, repression of *de jure* constitutional rights is much more likely in periods of political conflict (Davenport 2007a, b).

Given the considerations presented above, one may conclude that *de jure* entrenchment of constitutional rights is expected to improve constitutional practice under a certain set of conditions. *De jure* rights are neither a necessary, nor a sufficient condition for *de facto* protection of these rights. This is particularly clear when one considers countries, which respect rights *de facto*, even though they have not been *de jure* specified in their constitutions. This phenomenon has been coined constitutional overperformance (cf. Law and Versteeg 2013; Metelska-Szaniawska and Lewczuk 2018). The existence of constitutional overperformance around the globe indicates that it is possible that some factor other than the existence of *de jure* rights assures their *de facto* protection (Melton 2013). In other words, in some settings *de jure* rights are clearly redundant for constitutional practice.

3.2 Results of empirical studies

In part in relation to theoretical works and in part independently of such background, empirical studies of the relationship between *de jure* and *de facto* constitutional rules have recently began to develop. Quantitative studies have been conducted for broad samples, usually consisting of more than 100 countries from different continents and with considerable institutional heterogeneity both in the formal and factual dimension. For instance: Hayo and Voigt (2007, 2018), as well as Melton and

Ginsburg (2014), study this problem with regard to constitutional court independence; Melton et al. (2013) compare the relationship between *de jure* and *de facto* rules in two areas—the structure of power and constitutional rights; while Hayo and Voigt (2008) analyze the influence of *de jure* central bank independence on its factual level.

The *de jure*–*de facto* relationship in the area of constitutional rights and freedoms has also been the focus of several studies with an empirical component (see e.g. Davenport 1996; Keith 2002, 2012; Keith et al. 2009; Fox and Flores 2009). As already mentioned, most of these studies suggest that structural provisions are more effective in constraining governments than *de jure* rights and freedoms. More recent works, however, question the validity of these results on several grounds, suggest more sophisticated and rigorous empirical techniques, and bring forward evidence of at least partial or conditional relevance of *de jure* provisions for *de facto* protection of some types of rights.

For this paper two works are of particular relevance. In the first one, based on a study of 189 countries for the period 1981–2010, Melton (2013) uses random effects models and matching techniques to find that *de jure* entrenchment of the freedom of association, freedom of expression, and freedom of movement improves their *de facto* protection, while this is not the case for freedom of religion, press freedom, and the prohibition of torture (entrenchment may actually increase the violation of these rights/freedoms). In the second one, Chilton and Versteeg (2016) focus on the relevance of *de jure* protection of 6 constitutional rights (the right to form political parties, right to unionize, freedom of association, freedom of religion, freedom of expression, and freedom of movement) for the degree of government repression of these rights, i.e. their *de facto* equivalents, using matching and postmatching regression analysis, as well as a few other estimation strategies as robustness checks. In their study, including up to 186 countries for the period 1946–2012, they find a robust and statistically significant positive impact of the rights to establish political parties and to unionize on government respect for these rights, while freedom of movement and freedom of expression do not exert such an effect. For the remaining two freedoms included in their study (freedom of religion and freedom of association) the results do not allow for clear conclusions. They interpret these findings as a confirmation of the theoretical suggestion that “organizational” rights establishing organizations, having the means and incentives to protect the given rights, become self-enforcing and are *de facto* more effective than rights that do not establish such organizations (“individual rights”).

Importantly, the discussed empirical studies are also valuable sources of information concerning other than text potential determinants of *de facto* protection of constitutional rights and freedoms and, in particular, those conditioning the significant effect of the text on practice in this area. Among these other factors, the following are typically included: democracy level (more democratic countries are characterized by less government repression), economic development level (wealthier countries tend to have less repression), population size (larger countries tend to commit more violations), political conflict (engagement in both domestic and international conflicts tends to increase rights violations), robustness of civil society (well-developed civil societies strengthen rights enforcement mechanisms), ethnic

fractionalization (more heterogeneous societies are more prone to rights violations and have more difficulty in enforcing them).

As already discussed in the theoretical section, the most important factor conditioning the relevance of *de jure* constitutional rights for their *de facto* protection is the functioning of an independent judiciary (see e.g. Melton 2013). In particular, this pertains to the constitutional judiciary (in countries, where it exists). Constitutional courts sanction the text of the constitution by way of asserting that a given law-making activity of the state fails to conform to the constitution. The functioning of independent constitutional courts constitutes, therefore, a condition for effective functioning of the constitution itself understood as a set of self-restraints imposed on the state, expressed in the form of credibility-enhancing mechanisms (Feld and Voigt 2003; Voigt et al. 2015). Melton (2013) posits that relatively smaller gaps between *de jure* and *de facto* constitutional rules relating to catalogues of rights and freedoms will exist where factual constitutional court independence is high. Simmons (2009) and Lupu (2013) also confirm that independent judiciaries constitute mechanisms for enforcing *de facto* rights. However, more and more often constitutional courts have recently taken on the role of an ultimate legislator, adjusting the content of formal rules to changing social circumstances (Stone-Sweet 2007). In particular, this has been so in situations, when transaction costs connected with law-making activity at the constitutional level were high (Stone-Sweet 2000). On the basis of these arguments, one may conjecture that judicial activism at independent constitutional courts may lead both to an increase, as well as to a decrease, of the gap between *de jure* and *de facto* constitutional rules. This is one of the doubts that our empirical study, presented further, will aim to resolve for the case of post-socialist countries.

3.3 Post-socialist countries

Transformation of political and economic systems that took place in post-socialist countries of Europe and Asia, beginning in 1989, required establishing new constitutional frameworks and this process has sometimes been called in the literature a “gigantic natural experiment” (Elster 1993). Research on the relevance of constitutional rules for post-socialist transition constitutes part of a broader strand of literature interested in studying the role of formal and informal rules (institutions) in this process (see e.g. Pejovich 1997, 1999, 2003; Winiecki 2004; Gruszevska 2012). Studies in constitutional economics confirm that for post-socialist countries a series of *de facto* constitutional rules (e.g. concerning the structure of power, bills of rights, and constitutional court independence) have been significant for successful implementation of economic reforms in transition (Metelska-Szaniawska 2009, 2016). In particular, if these rules impose constraints on representatives of state power in order to enhance their commitment to promises made by enacting given policies or reforms, such rules contribute to a conducive constitutional setting for the implementation of these policies and reforms. The question remains, whether, and if so, to what extent, *de jure* constitutional rules have such effect. Bjoernskov (2015) indicates, for example, a *ceteris paribus* negative direct relationship between

de jure property rights protections in post-socialist countries and their economic growth. Other works (e.g. Smithey and Ishiyama 2002; Herron and Randazzo 2003; Metelska-Szaniawska 2016) find an insignificant, and under some conditions negative, direct relationship between *de jure* constitutional court independence in post-socialist countries in the period 1989–2012 and economic performance. Such findings provide particularly interesting ground for analysis of the relevance of *de jure* constitutional rules in post-socialist countries for their *de facto* equivalents drawing on the theoretical and empirical arguments presented earlier in this paper.

Although the specific constitutional solutions adopted by various post-socialist countries vary significantly, the main common feature of these constitutions was the attempt, reflected in their content, to break away from the socialist or communist past, by giving priority to formal provisions declaring the democratic nature and sovereignty of these states (Sadurski 2002). Such circumstances correspond with the view of the constitution’s role as a blueprint.¹⁵ In such case the discrepancy between *de jure* and *de facto* constitutional rules is initially determined by the informal institutional framework functioning in post-socialist countries/societies at the moment of drafting and enacting *de jure* rules (cf. Pejovich 1997, Winiecki 2004). In an empirical study for all post-socialist countries for the period 1989–2011 Metelska-Szaniawska (2020) confirmed the presence of two counteracting effects in relation to the evolution of the *de jure–de facto* constitutional gap (referring to 6 constitutional rights and freedoms) in post-socialist countries: the effect of the aging of constitutions (increase of the gap as time passes from the adoption of a constitution), as well as the constitution-as-blueprint effect, however only for post-socialist countries other than former Soviet republics in Asia, Belarus or Russia. More importantly, this study also identified several explanans of the *de jure–de facto* constitutional gap relating, in particular, to the democratization process in these countries, presence of political conflicts, as well as their constitutions’ age and degree of comprehensiveness. These considerations, however, related to the size of the *de jure–de facto* constitutional gap (in the area of selected rights and freedoms) and did not ask the question about the significance of *de jure* protection of these rights for their *de facto* functioning. They did, nevertheless, indicate that the degree of comprehensiveness of the *de jure* bill of rights envisaged in a constitution (i.e. the number of included rights and freedoms) was a relevant factor, as promising too much in this respect could lead to an even larger constitutional gap (“the key to successful avoidance of the negative consequences of large *de jure–de facto* constitutional gaps lies in making sure that countries drafting constitutions which are intended to serve as blueprints ‘don’t bite off more than they can chew’”—Metelska-Szaniawska 2020, pp. 24–25).

It also seems particularly interesting to determine the role of constitutional judiciaries and, in particular, their independence for the significance (or not) of

¹⁵ Melton et al. (2013) propose the following classification of constitutions relevant from the point of view of determining the relations between their *de jure* content and *de facto* functioning: constitutions being operating manuals, constitutions-blueprints, constitutions-billboards, and constitutions as window-dressing.

de jure constitutional provisions for *de facto* protection of constitutional rights and freedoms in post-socialist countries. As described earlier, judicial activism at independent constitutional courts may lead both to an increase and to a decrease of the gap between formal and factual constitutional rules. The specific role of constitutional courts in post-socialist countries stems from the fact that since virtually the beginning of their existence these courts have been focusing on determining the precise meaning of the content of constitutional rights and freedoms in these countries, having at the same time a relatively strong formal position in their system of powers (Sadurski 2012). The results of empirical studies concerning the role of the degree of (*de facto*) judicial independence for the size and evolution of the *de jure–de facto* constitutional gap in post-socialist countries remain so far inconclusive (*cf.* Metelska-Szaniawska 2020).

One of the most convincing conclusions stemming from the existing cross-country studies concerning the significance of the constitution text for constitutional practice and economic performance is that this relationship is in part conditional on the political regime (in particular, whether it is democratic or authoritarian) and political stability in the given country (periods of tranquility vs. periods of conflict) (e.g., Melton 2013; Ginsburg and Simpser 2013). With regard to post-socialist countries, Metelska-Szaniawska (2020) provides evidence that progress in democratization taking place in these countries after 1989 went together, *ceteris paribus*, with mitigating the *de jure–de facto* constitutional gap (while backlashes in democratization could in part explain the constitutional gap increases in some countries during transition). These results are particularly convincing with regard to civil and political rights. The question remains whether together with the progress in democratization, the content of *de jure* constitutional rules became, *ceteris paribus*, more or less significant for the operation of *de facto* constitutional rules in these countries.

Finally, having just said that the degree of democratization could potentially make for an important factor determining the relevance of *de jure* constitutional rules for *de facto* protection of rights and freedoms in post-socialist countries, in this context we should also mention another role for democracy suggested by the literature on the so-called illiberal democracy. States, where fundamental institutions regarding elections are valid but rights are routinely violated, are classified as illiberal democracies (Zakaria 1997). Mukand and Rodrik (2020) argue that for successful transformation, sets of property rights, political rights and civil rights must be respected, what occurs in liberal democracies. Democratic transitions typically do not lead to liberal democracies as they are a “product of a settlement between the elite (who care mostly about property rights) and the majority (who care mostly about political rights)” (Mukand and Rodrik 2020, p. 765). According to such political logic behind the emergence of democracy, minorities have neither the required resources, nor constitute a sufficiently large group in terms of numbers to effectively secure the protection of civil rights. Therefore, electoral, not liberal democracy is the outcome of such political settlement. The investigation of the relevance of *de jure* constitutional provisions stipulating protection of rights for *de facto* performance of post-socialist countries of Europe and Asia in this area should be conducted with this context in mind.

4 Empirical model and methodology

In this section we ask the question whether constitutional *de jure* civil rights protection in post-socialist states matters for *de facto* protection of these rights and under what conditions. The main expectation is that by establishing a *de jure* set of civil rights, post-socialist countries increased the odds for practical execution of these rights. Our study covers the following list of *de jure* civil rights and their *de facto* equivalents: freedom of assembly or association (*fra*), freedom of movement (*frm*), freedom of religion (*frr*), *habeas corpus* (variable name: *hc*), and prohibition of torture (*prt*).¹⁶ Aggregate variables *rights_de_jure* and *rights_de_facto* are constructed based on average scores on these 5 rights in their *de jure* and *de facto* dimensions. With regard to *de jure* rights, we focus simply on the existence of rules pertaining to the protection of these rights in the constitutions and do not consider their wording in detail due to potential subjectivity of such approach and numerous language nuances that would render our comparative analysis questionable. *De facto* indicators reflect government practice (violations) of these rights. Our empirical tests involve explaining variation in *de facto* protection of these rights (both for all rights, as well as for each of them separately) by reference to their *de jure* equivalents, as well as other potential determinants of rights enforcement.

The selection of control variables, i.e. potential determinants of rights enforcement other than *de jure rights* provisions, is based on the theoretical and empirical literature surveyed in Sect. 3 and includes: a measure of conflict (variable name: *conflict*), number of years since the adoption of the given post-socialist constitution (*constitution_time*), the political competition component of an indicator of democracy (*democracy_competition*),¹⁷ a *de facto* judicial independence indicator (*judicial_independence*), log of population (*population*), log of GDP per capita (*GDP_per_capita*), and a measure of the robustness of civil society (*civil_society*). We also include a dummy variable for the group of countries that joined the European Union in 2004 (*EU*) as the accession process may have contributed to the existence of an external rights-enforcement mechanism in these states during the period covered by our study.¹⁸

¹⁶ The selection of rights for the empirical study is determined by the availability of *de jure* and *de facto* measures providing for the possibility to match a single *de jure* right with the respective *de facto* measure.

¹⁷ Given the broad nature of the usual composite indicators of democracy/democratization, which, in fact, often also contain a rights enforcement component, and in order to avoid allegations concerning the likely co-determination of our dependent variable and the variable relating to democratization, we include only the political competition component of the democracy indicator, as provided by Vanhanen (2000, 2016), in our model.

¹⁸ In earlier tests we included several other variables, however as they turned out insignificant in all (or nearly all) specifications, we removed them from the final analysis presented here. This concerned, in particular, variables aimed at capturing ethnic heterogeneity, dummy variables relating to country groups, e.g. those that constituted independent states prior to the post-socialist transition process, as well as another potential external factor—the ratification of the International Covenant on Civil and Political Rights (however, the majority of post-socialist countries ratified it at the beginning of their transformation or even prior to the transition process). We also studied the potential role of more detailed characteristics of countries’ systems of government, in particular the strength of checks and balances and classification of regime types proposed by Cheibub et al. (2010) but they also proved insignificant in nearly all cases so we restrain from presenting these results in the paper.

The descriptive statistics for the dependent variable and the complete set of explanans are summarized in Table 3. We list all variables included in the analyses, together with their descriptions and data sources, in Appendix (Table 9).

Thanks to a relatively stronger electoral enforcement mechanism, democratic regimes with a larger degree of political competition are expected to be more effective at upholding rights declared in the constitution and demonstrate higher constitutional compliance than authoritarian ones. A similar positive effect is also hypothesized for countries which have a well-developed civil society, favorable economic conditions, and a relatively more independent judiciary as a crucial element of the rights enforcement mechanism. On the other hand, countries plagued by armed political conflict (including intra- and interstate wars), with large populations, are expected to be more prone to constitutional violations. We question the significance of the age of constitutions in this context (since its usual effect increasing the *de jure*–*de facto* gap is expected to be offset by a counter-effect connected with the post-socialist constitutions' role as blueprints, at least for some countries in the sample). In order to study under what conditions *de jure* rights provisions matter for their *de facto* equivalents, we further enrich our model by including interactions of *de jure* rights variables with variables proxying for potentially relevant conditions. We discuss these specifications in more detail alongside the presented results.

We test our model employing panel data regression techniques. Our panel includes 26 out of the 28 existing post-socialist countries and the time period spans from 1989 to 2010 (the upper limit being determined by data availability, however covering the core period of post-socialist transition and the first two, or for some countries nearly two, decades of the functioning of post-socialist constitutions). We frame our analysis in the so-called 'transition time', rather than calendar time, in order to account for the fact that transition started at different times in different countries.¹⁹ Transition time is defined as beginning in 1989 for Poland and Hungary, 1990 for other Central and Southeastern European countries (except Albania), 1991 for Albania and the Baltic states, and 1992 for the former Soviet republics.

Given potential endogeneity problems in our data and the fact that due to lack of appropriate instruments a more sophisticated instrumental variables analysis is not feasible, we consider the fixed-effects model, enabling to control for country-specific fixed effects, more reliable for drawing conclusions from our panel than the random effects model.²⁰ At the same time we are aware that the fixed-effects model does not allow to study the effect of time-invariant variables on the dependent variable. Therefore, to expand our perspective, we perform the Hausman–Taylor regressions (Hausman and Taylor 1981; Amemiya and MaCurdy 1981). This approach

¹⁹ In doing so we follow the empirical literature on post-socialist economic transition (e.g. Falcetti et al. 2002, 2006), as well as our earlier studies on economic effects of post-socialist constitutions (e.g. Metelska-Szaniawska 2009, 2016), including the effects and determinants of the *de jure*–*de facto* constitutional gap in these countries (Metelska-Szaniawska 2020).

²⁰ This is also suggested by the Hausman test results for all studied specifications.

Table 3 Descriptive statistics. *Source:* Authors’ calculations

Variable	# Observations	Mean	Standard deviation	Minimum	Maximum
<i>rights_de_facto</i>	558	0.607	0.247	0	1
<i>rights_de_jure</i>	524	0.962	0.092	0.200	1
<i>conflict</i>	594	0.104	0.306	0	1
<i>constitution_time</i>	539	9.583	5.925	1	23
<i>population</i>	595	15.777	1.054	14.095	18.817
<i>GDP_per_capita</i>	568	8.853	0.731	6.970	10.197
<i>judicial_independence</i>	591	0.469	0.274	0.017	0.958
<i>democracy_competition</i>	595	43.754	21.284	0	70
<i>civil_society</i>	531	0.695	0.253	0.030	0.967
<i>EU</i>	595	0.308	0.462	0	1
<i>fra_de_facto</i>	558	0.569	0.383	0	1
<i>fra_de_jure</i>	568	0.919	0.273	0	1
<i>frm_de_facto</i>	559	0.718	0.361	0	1
<i>frm_de_jure</i>	524	0.994	0.076	0	1
<i>frr_de_facto</i>	559	0.538	0.386	0	1
<i>frr_de_jure</i>	524	0.966	0.182	0	1
<i>hc_de_facto</i>	558	0.892	0.270	0	1
<i>hc_de_jure</i>	518	0.876	0.329	0	1
<i>pri_de_facto</i>	558	0.320	0.338	0	1
<i>pri_de_jure</i>	522	0.979	0.144	0	1

combines the consistency of fixed-effects estimators with the applicability of the random-effects model and in this way, in particular, allows to estimate the coefficients of time-invariant variables in our model. The individual means of exogenous regressors are taken as instruments for the time-invariant regressors, which are correlated with the individual effects (Baltagi 2001). The key step of the Hausman–Taylor estimation is, therefore, to distinguish between regressors that are uncorrelated and those that are potentially correlated with the errors. Based on the relevant literature surveyed earlier, as well as statistical testing, we identify *conflict*, *constitution_time*, *population*, and *GDP_per_capita* as exogenous time-varying variables in our model. The only time-invariant exogenous variable is the *EU* dummy variable. The remaining variables—*democracy_competition*, *judicial_independence*, *civil_society*, and our crucial variable of interest in this study—*rights_de_jure*—are considered as endogenous time-varying variables.²¹ Interactions between endogenous and exogenous variables are also regarded as endogenous.

²¹ Different classifications of exogenous and endogenous variables did not alter the results and conclusions presented in the subsequent section.

5 Results

Table 4 presents the results for the baseline model aiming to explain the aggregate measure of *de facto* rights. As a starting point, in Column I we demonstrate the results of ordinary pooled OLS estimation for our panel, Column II reports the results with fixed effects (FE), and Column III—for the Hausman–Taylor (HT) approach.

Several interesting conclusions emerge from our analysis. Firstly, many potential explanans, included as control variables in our model, confirm their significant link with the aggregate measure of *de facto* civil rights protected in post-socialist countries. Such negative significant effect is found in all three columns of Table 4 for presence of an armed conflict (countries experiencing conflict have weaker *de facto* protection of rights), age of the constitution measured by the number of years since its adoption (a weak link that may be connected with gradual obsolescence of constitutional rules), and population size (large populations are more prone to constitutional violations). Two variables are found to be positively linked to the aggregate measure of *de facto* civil rights protected in post-socialist countries: GDP per capita²² and robustness of civil society (indicating, in line with our expectations, that better economic conditions and more developed civil societies are favorable to effective protection of rights). For the remaining control variables the results are mixed or suggest no statistical significance. Most importantly from the point of view of the main interest of this paper, however, the aggregate measure of *de jure* civil rights protection fails to confirm that post-socialist countries coding more rights in the text of their constitutions also experience stronger *de facto* protection in this respect. This is demonstrated by the statistically insignificant coefficient on the *rights_de_jure* variable in all three columns of Table 4.²³ Before drawing further conclusions from these results we take a deeper look into the potential indirect effects of text on constitutional practice in protecting rights in post-socialist countries.

In Table 5 we present estimation results for specifications which supplement the baseline model with interactions of the *de jure* rights proxy with subsequent explanans included in the model (each row in the table relates to a distinct specification), again both for FE and HT. Given the so far not convincing results as regards direct effects of constitution text on constitutional practice in the studied context, the inclusion of these interactions allows to study potential indirect effects, i.e. answer the question whether in certain circumstances or under certain conditions *de jure* rights provisions do significantly matter for their *de facto* equivalents in post-socialist countries (and in what way).

The results presented in Table 5 demonstrate significant positive effects of *de jure* rights on their *de facto* equivalents conditional on judicial independence, democratization (political competition), and robustness of civil society. In line with our expectations concerning the role of various rights enforcement mechanisms, this signifies that if a country is characterized by relatively higher judicial independence and/or more political

²² According to the more reliable results presented in Columns II and III of Table 4.

²³ In fact, in the more reliable FE and HT frameworks, Columns II and III of Table 4 report negative coefficients on this variable which are statistically significant at the 10% confidence level, what could be interpreted as a weak indication of the possible role of constitutional provisions as window dressing in these countries.

Table 4 Estimation results explaining aggregate *de facto* civil rights (dependent variable: *rights_de_facto*). Source: Authors’ calculations

Independent variables	Coefficients		
	I Pooled OLS	II FE	III HT
<i>rights_de_jure</i>	−0.039 (−0.67)	−0.162 (−1.81)	−0.161 (−1.82)
<i>conflict</i>	−0.103* (−3.68)	−0.081* (−3.08)	−0.071* (−2.76)
<i>constitution_time</i>	−0.008* (−4.90)	−0.009* (−5.60)	−0.009* (−5.57)
<i>population</i>	−0.038* (−6.30)	−0.594* (−4.58)	−0.317* (−3.47)
<i>GDP_per_capita</i>	0.020 (1.34)	0.068* (2.39)	0.072* (2.55)
<i>judicial_independence</i>	0.369* (6.32)	0.028 (0.25)	0.018 (0.16)
<i>democracy_competition</i>	−0.001 (−1.33)	7.2×10^{-5} (−0.11)	5.1×10^{-5} (0.08)
<i>civil_society</i>	0.308* (4.92)	0.525* (7.71)	0.548* (8.21)
<i>EU</i>	0.045 (1.75)	—	−0.096 (−0.36)
<i>constant</i>	0.785* (6.92)	9.238* (4.44)	4.841* (3.23)
R^2	0.729	0.321	—
<i>F</i> -statistic/ <i>chi</i> ² -statistic/Wald <i>chi</i> ²	218.69	24.20	191.89
# Observations/# Countries	458/26		

*Significant at a 5% level, values of the *t*-statistics in brackets

competition and/or a more developed civil society, the content of the constitution significantly positively impacts *de facto* protection of rights. At the same time, the interaction with *GDP_per_capita* in these estimations obtains a significant negative coefficient. In countries enjoying relatively better economic conditions, formal protection of constitutional rights is not a necessary prerequisite for its factual operation but may actually hinder it—in particular, where countries fall in a trap envisaging too broad guarantees of the protection of rights in their constitutions, trying, in other words, to ‘bite off more than they can chew’ (cf. Sect. 3.3). Finally, we do not find any evidence of an indirect effect of *de jure* rights on their *de facto* equivalents conditional on the presence of conflict in post-socialist countries, their population, the age of constitutions, or EU accession.²⁴

The results presented in Table 6 allow to take a more detailed look at the relationship between *de jure* and *de facto* protection of each type of rights included in our study.²⁵ They reveal a solid conclusion: Only with regard to freedom of assembly/association *de jure* protection in the constitution significantly affects *de facto* constitutional practice in post-socialist countries and this in the expected positive way, i.e. higher *de facto* protection of freedom of assembly/association is experienced by countries where this right is more strongly protected by constitutional provisions. Similar evidence is not found for any of the other four rights included in the study. We explain this by referring to the nature of these rights. While we do not study

²⁴ For the sake of clarity, in Table 5 we do not report the estimated coefficients for the control variables (we only list the latter). In general, their behavior is in line with the results for control variables presented in Table 4, with a handful of minor deviations that do not raise concern.

²⁵ As *fr_de_jure* is a time invariant variable in our sample, the *de jure*—*de facto* relationship for freedom of religion can only be assessed within the HT framework (cf. Columns V and VI of Table 6).

Table 5 Estimation results explaining aggregate *de facto* civil rights with interactions (dependent variable: *rights_de_facto*). Source: Authors' calculations

Independent variables	Coefficients			
	FE		HT	
	Interaction	<i>rights_de_jure</i>	Interaction	<i>rights_de_jure</i>
<i>rights_de_jure</i> × <i>conflict</i>	0.117	−0.162	0.168	−0.160
<i>rights_de_jure</i> × <i>constitution_time</i>	7.4×10^{-4}	−0.164	2.9×10^{-4}	−0.161
<i>rights_de_jure</i> × <i>population</i>	−0.183	2.658	−0.182	2.641
<i>rights_de_jure</i> × <i>GDP_per_capita</i>	−0.313*	2.360*	−0.329*	2.488*
<i>rights_de_jure</i> × <i>judicial_independence</i>	1.603*	−0.680*	1.665*	−0.699*
<i>rights_de_jure</i> × <i>democracy_competition</i>	0.013*	−0.622*	0.013*	−0.599*
<i>rights_de_jure</i> × <i>civil_society</i>	2.394*	−1.932*	2.317*	−1.874*
<i>rights_de_jure</i> × <i>EU</i>	0.401	−0.195*	0.397	−0.193*
Control variables	<i>conflict, constitution_time, population, GDP_per_capita, judicial_independence, democracy_competition, civil_society, EU</i>			
# Observations/# Countries	458/26			

*Significant at a 5% level, values of the *t*–statistics in brackets

typical “organizational” rights, as classified by Chilton and Versteeg (2016), such as the right to unionize or the right to form political parties, within our sample of rights freedom of assembly/association is clearly the most “organizational” in nature on the “organizational”–“individual” rights spectrum (it is inherent in both freedom of assembly, as well as freedom of association, that as citizens enjoy them, more or less formalized groups/organizations arise, which may strive for further protection of these freedoms). Therefore, in light of Chilton and Versteeg’s (2016) argumentation, presented earlier in Sect. 3.1, it is not surprising that only with regard to this right constitutional provisions are found to matter for post-socialist constitutional practice.

It is worth noting that R^2 is significantly lower for estimations presented in Table 6 than for the aggregate rights measures, especially for rights other than freedom of assembly/association, suggesting that there exist other explanations of *de facto* protection of “individual” rights that have not been accounted for in our framework. For example, in the case of freedom of religion this could be the factual distribution of religions in a given society and the role of religious minorities, while in the case of freedom of movement a likely factor could be the development of infrastructure and access to means of transport in different post-socialist countries. We leave the verification of these hypotheses for further studies concentrating on the protection of each of these rights.

One can find some indications of differences between the mechanisms behind *de facto* protection of the 5 rights included in this study in the results obtained for the control variables in the subsequent columns of Table 6. No single control variable is significant throughout the table. Robustness of civil society (as a positive factor) and the age of the constitution (as a negative one) come close to confirming their significance for all 5 rights included in the study but there are also variables that prove

Table 6 Estimation results explaining 5 types of *de facto* civil rights. *Source:* Authors' calculations

Independent variables	Coefficients									
	Dependent variable: <i>fra_de_facto</i>		Dependent variable: <i>frm_de_facto</i>		Dependent variable: <i>frr_de_facto</i>		Dependent variable: <i>hc_de_facto</i>		Dependent variable: <i>prr_de_facto</i>	
	I FE	II HT	III FE	IV HT	V FE	VI HT	VII FE	VIII HT	IX FE	X HT
<i>fra_de_jure</i>	0.203* (2.63)	0.206* (2.71)	-	-	-	-	-	-	-	-
<i>frm_de_jure</i>	-	-	-0.163 (-1.02)	-0.142 (-0.91)	-	-	-	-	-	-
<i>frr_de_jure</i>	-	-	-	-	-	-1.646 (-0.23)	-	-	-	-
<i>hc_de_jure</i>	-	-	-	-	-	-	-0.072 (-1.24)	-0.60 (-1.06)	-	-
<i>prr_de_jure</i>	-	-	-	-	-	-	-	-	-0.111 (-1.10)	-0.105 (-1.06)
<i>conflict</i>	-0.148* (-2.75)	-0.132* (-2.55)	-0.080 (-1.64)	-0.063 (-1.31)	0.095 (1.63)	0.110 (1.92)	-0.249* (-6.37)	-0.264* (-6.95)	-0.106 (-1.95)	-0.087 (-1.66)
<i>constitution_time</i>	-0.010* (-2.85)	-0.010* (-3.02)	-0.005 (-1.71)	-0.005 (-1.61)	-0.024* (-6.84)	-0.023* (-6.86)	0.004 (1.77)	0.004 (1.82)	-0.010* (-3.31)	-0.010* (-3.31)
<i>population</i>	-0.187 (-0.68)	-0.028 (-0.47)	-1.360* (-5.65)	-0.877* (-4.62)	-1.490* (-5.16)	-1.079* (-4.49)	0.715* (3.58)	0.321* (2.43)	-0.695* (-2.64)	-0.213 (-1.58)
<i>GDP_per_capita</i>	0.007 (0.12)	0.019 (0.34)	0.052 (0.96)	0.057 (1.07)	0.317* (4.96)	0.322* (5.12)	-0.079 (-1.75)	-0.089* (-2.03)	0.020 (0.34)	0.028 (0.48)
<i>judicial_independence</i>	-0.521* (-2.15)	-0.497* (-2.16)	0.115 (0.56)	0.097 (0.48)	0.187 (0.76)	0.170 (0.70)	0.023 (0.14)	0.031 (0.19)	0.330 (1.43)	0.304 (1.35)
<i>democracy_competition</i>	0.002 (1.40)	0.002 (1.59)	-0.002 (-1.62)	-0.002 (-1.46)	0.001 (0.50)	0.001 (0.64)	0.001 (1.05)	0.001 (0.82)	-0.002 (-1.68)	-0.002 (-1.53)

Table 6 (continued)

Independent variables	Coefficients									
	Dependent variable: <i>frr_de_facto</i>		Dependent variable: <i>frr_de_facto</i>		Dependent variable: <i>hc_de_facto</i>		Dependent variable: <i>hc_de_facto</i>		Dependent variable: <i>prr_de_facto</i>	
	I FE	II HT	III FE	IV HT	V FE	VI HT	VII FE	VIII HT	IX FE	X HT
<i>civil_society</i>	0.798* (6.71)	0.985* (6.96)	0.270* (2.18)	0.307* (2.51)	0.166 (1.11)	0.198 (1.35)	0.804* (7.92)	0.777* (7.82)	0.307* (2.20)	0.348* (2.57)
<i>EU</i>	–	0.127 (0.82)	–	–0.282 (–0.44)	–	–0.481 (–0.49)	–	0.067 (0.19)	–	0.042 (0.13)
<i>Constant</i>	2.826 (0.64)	0.140 (0.13)	21.754* (5.63)	14.115* (4.54)	21.187* (4.57)	16.345* (2.07)	2.141 (0.54)	–3.921 (–1.81)	11.048* (2.62)	3.321 (1.49)
<i>R</i> ²	0.235	–	0.120	–	0.178	–	0.023	–	0.154	–
<i>F-stat/chi</i> ² - <i>stat/Wald</i>	13.37	115.80	6.52	42.46	12.41	82.51	24.97	199.80	5.51	42.94
<i>chi</i> ²										
# Obs./# Countries	472/26		459/26		459/26		459/26		459/26	

*Significant at a 5% level, values of the *t*-statistics in brackets

insignificant for all of them (i.e. those that also failed to confirm their significance for the aggregate *rights_de_facto* measure—*democracy_competition* and *EU_2004*). There are also interesting cases of different roles of the same factor in *de facto* protection of different rights, e.g. while for freedom of movement, freedom of religion and prohibition of torture more populated countries experience lower *de facto* protection, for *habeas corpus* the relationship is reversed (a contrary pattern is identified with regard to freedom of religion and *habeas corpus* for *GDP_per_capita*). These are subsequent open questions for future research on the determinants of *de facto* rights.

Concentrating further on the main focus of the paper, i.e. the role of *de jure* protection of rights for their *de facto* equivalents, given the results obtained above with regard to freedom of assembly/association, in the final part of our empirical study we check for the existence of conditional effects for the dependent variable *fra_de_facto* by including interactions of *fra_de_jure* with the remaining explanatory variables in our model. The results of these estimations are reported in Table 7, which follows the convention of Table 5 presented earlier for the aggregate measure of rights. They demonstrate that in circumstances of relatively stronger conflict, as well as in countries enjoying higher judicial independence (according to the more reliable HT estimations), envisaging *de jure* protection of freedom of assembly/association in a country's constitution contributes to *de facto* protection of this freedom. The same is true for countries performing better economically, while for states with larger populations there is evidence suggesting that *de jure* protection of freedom of assembly/association may serve as window dressing.

All in all, the results obtained in search for determinants of *de facto* protection of civil rights in post-socialist countries do not confirm, in a convincing way, the role of their *de jure* equivalents, contradicting our general expectations in this respect. However, they can be treated as an extension of the conclusions formulated earlier in the literature with regard to the factors responsible for the enforcement of civil rights in post-socialist countries, as well as a step towards a complete and complex empirical account of the constitutional credibility problem resulting in emergence of such phenomena as the *de jure–de facto* constitutional gap or constitutional underperformance in these countries.

6 Conclusions

The aim of this paper was to contribute to a better understanding of the role of *de jure* constitutional rules for their *de facto* equivalents, with particular emphasis on protection of rights and freedoms. In this way we also intended to indirectly enrich the state of art concerning economic effects of constitutions, as such effects have repeatedly been confirmed in existing literature for *de facto* constitutional rules, while these studies failed to make the link to *de jure* constitutional text or brought questionable conclusions in this respect.

By linking institutional and constitutional economics literature with currently developing studies on illiberal democracies, enforcement of rights, constitutional underperformance and constitutional *de jure–de facto* gap, we provided a theoretical framework allowing for a more systematic account of the central issue of the paper. The empirical study, based on the unique setting of post-socialist countries, revealed that the content of *de jure* constitutional rules originating from the text of these countries' constitutions had, generally, no significant impact on their *de facto* performance in the

Table 7 Estimation results explaining *de facto* freedom of assembly or association with interactions (dependent variable: *fra_de_facto*). Source: Authors' calculations

Independent variables	Coefficients			
	FE		HT	
	Interaction	<i>fra_de_jure</i>	Interaction	<i>fra_de_jure</i>
<i>fra_de_jure</i> × <i>conflict</i>	0.365*	0.062	0.372*	0.064
<i>fra_de_jure</i> × <i>constitution_time</i>	−0.051	0.334*	−0.055	0.348*
<i>fra_de_jure</i> × <i>population</i>	−0.491*	7.723*	−0.489*	7.695*
<i>fra_de_jure</i> × <i>GDP_per_capita</i>	0.264*	−1.967*	0.266*	−1.969*
<i>fra_de_jure</i> × <i>judicial_independence</i>	0.633	−0.034	0.645*	−0.035
<i>fra_de_jure</i> × <i>democracy_competition</i>	−0.006	0.411*	−0.005	0.395*
<i>fra_de_jure</i> × <i>civil_society</i>	−0.195	0.344	−0.165	0.326
<i>fra_de_jure</i> × <i>EU</i>	0.370	0.140	0.374	0.143
Control variables	<i>conflict, constitution_time, population, GDP_per_capita, judicial_independence, democracy_competition, civil_society, EU</i>			
# Observations/# Countries	458/26			

*Significant at a 5% level, values of the *t*-statistics in brackets

area of protection of rights and freedoms. Exceptions from this general finding may only be expected in the area of “organizational” rights, for which mechanisms of self-enforcement are at play (e.g. freedom of assembly/association). In principle, therefore, countries striving to improve factual protection of rights should not limit their efforts to envisaging broad *de jure* protections of rights in their constitutions but also guarantee the functioning of a highly independent judiciary, a competitive electoral democracy, and a robust civil society. Only under such conditions does the constitution text matter.

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Appendix

See Tables 8 and 9.

Table 8 *De facto* protection of rights and freedoms in post-socialist constitutions. *Source:* Own elaboration on the basis of Cingranelli et al. (2014) and Freedom House (2017, 2019)

Country/ year	1980*						1990						2000						2010**						2016						
	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP	PIR	CL	FP	PR	CL	FP	
Albania	0.13	0.00	0.44	0.00	0.00	nf	0.38	0.14	0.44	0.00	0.17	nf	0.38	0.64	0.44	0.50	0.33	0.56	0.75	0.64	0.33	0.67	0.67	0.50	0.67	0.67	0.50	0.67	0.67	0.51	
Armenia	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.50	0.43	0.33	0.50	0.50	0.59	0.50	0.43	0.33	0.17	0.50	0.65	0.33	0.50	0.63	0.50	0.63	0.50	0.63
Azerbaijan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.50	0.29	0.44	0.17	0.33	0.76	0.38	0.29	0.33	0.17	0.33	0.79	0.00	0.17	0.90	0.00	0.17	0.90	
Belarus	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.50	0.29	0.44	0.17	0.17	0.80	0.50	0.14	0.33	0.00	0.17	0.93	0.00	0.17	0.83	0.00	0.17	0.83	
Bosnia-Herz.	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	na	na	0.00	0.33	0.50	0.54	0.75	0.43	0.33	0.50	0.67	0.48	0.50	0.50	0.51	0.50	0.51	0.51	
Bulgaria	0.38	0.00	0.56	0.00	0.00	nf	0.38	0.50	0.44	0.67	0.50	pf	0.50	0.50	0.44	0.83	0.67	0.26	0.63	0.64	0.44	0.83	0.83	0.35	0.83	0.83	0.35	0.83	0.83	0.42	
Croatia	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	0.75	0.57	0.44	0.83	0.67	0.50	1.00	0.79	0.44	1.00	0.83	0.41	1.00	0.83	0.41	1.00	0.83	0.41	
Czech Rep.	0.38	0.21	0.33	0.00	0.17	nf	1.00	0.79	0.44	0.83	0.83	f	0.88	0.79	0.67	1.00	0.83	0.24	1.00	0.79	0.44	1.00	1.00	0.19	1.00	1.00	0.21	1.00	1.00	0.21	
Estonia	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	1.00	1.00	0.67	1.00	0.83	0.20	0.88	0.93	0.44	1.00	1.00	0.18	1.00	1.00	0.16	1.00	1.00	0.16	
Georgia	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.63	0.64	0.44	0.50	0.50	0.53	0.50	0.36	0.33	0.50	0.67	0.55	0.67	0.67	0.50	0.67	0.67	0.50	
Hungary	0.88	0.43	0.44	0.17	0.33	nf	1.00	0.86	0.67	0.83	0.83	f	1.00	0.86	0.67	1.00	0.83	0.28	0.75	0.79	0.33	1.00	1.00	0.30	0.67	0.83	0.44	0.67	0.83	0.44	
Kazakhstan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.63	0.21	0.44	0.17	0.33	0.70	0.25	0.29	0.33	0.17	0.33	0.80	0.00	0.33	0.85	0.00	0.33	0.85	
Kyrgyzstan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.75	0.29	0.67	0.17	0.33	0.61	0.25	0.43	0.33	0.33	0.33	0.70	0.33	0.33	0.67	0.33	0.33	0.67	
Latvia	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.88	0.93	0.44	1.00	0.83	0.24	0.75	0.71	0.33	0.83	0.83	0.26	1.00	0.83	0.26	1.00	0.83	0.26	
Lithuania	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.88	0.79	0.67	1.00	0.83	0.20	0.88	0.64	0.44	1.00	1.00	0.22	1.00	1.00	0.21	1.00	1.00	0.21	
Moldova	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.63	0.79	0.56	0.83	0.50	0.59	0.63	0.50	0.44	0.67	0.67	0.55	0.67	0.67	0.56	0.67	0.67	0.56	
Montenegro	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	0.13	0.14	0.33	0.50	0.50	0.56	0.88	0.71	0.33	0.67	0.83	0.37	0.67	0.67	0.44	0.67	0.67	0.44	
North Macedonia	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	0.88	1.00	0.44	0.50	0.67	0.44	0.50	0.71	0.44	0.67	0.67	0.48	0.50	0.67	0.64	0.67	0.67	0.64	

Table 8 (continued)

Country/ year	1980*				1990				2000				2010**				2016										
	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP	PIR	EMPR	WR	PR	CL	FP			
Poland	0.75	0.50	0.44	0.17	0.50	pf/nf	0.75	0.86	0.67	0.83	0.83	f	0.75	0.93	0.56	1.00	0.83	0.19	0.75	0.86	0.33	1.00	1.00	0.25	1.00	0.83	0.34
Romania	0.50	0.14	0.78	0.00	0.17	nf	0.50	0.71	0.56	0.17	0.33	nf	0.63	0.71	0.44	0.83	0.83	0.44	0.75	0.57	0.33	0.83	0.83	0.42	0.83	0.83	0.38
Russia	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.25	0.43	0.33	0.33	0.33	0.60	0.00	0.14	0.33	0.17	0.33	0.81	0.00	0.17	0.83
Serbia	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	0.13	0.14	0.33	0.50	0.50	0.56	0.88	0.57	0.44	0.83	0.83	0.33	0.67	0.83	0.49
Slovakia	0.38	0.21	0.33	0.00	0.17	nf	1.00	0.79	0.44	0.83	0.83	f	0.75	0.79	0.56	1.00	0.83	0.26	0.88	0.71	0.44	1.00	1.00	0.22	1.00	1.00	0.26
Slovenia	0.50	0.43	0.67	0.17	0.33	nf	0.63	0.50	0.44	0.33	0.50	pf	0.88	0.86	0.67	1.00	0.83	0.21	1.00	0.93	0.44	1.00	1.00	0.25	1.00	1.00	0.23
Tajikistan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.13	0.43	0.33	0.17	0.17	0.79	0.50	0.36	0.33	0.17	0.33	0.78	0.00	0.17	0.87
Turkmen- istan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.50	0.14	0.44	0.00	0.00	0.89	0.38	0.07	0.33	0.00	0.00	0.96	0.00	0.00	0.98
Ukraine	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.50	0.50	0.44	0.50	0.50	0.60	0.50	0.71	0.44	0.67	0.67	0.56	0.67	0.53	
Uzbeki- stan	0.13	0.00	0.56	0.17	0.00	nf	0.75	0.21	0.44	0.33	0.50	pf	0.25	0.07	0.44	0.00	0.17	0.84	0.38	0.07	0.33	0.00	0.00	0.94	0.00	0.00	0.95
Post-soc. aver- age	0.29	0.15	0.56	0.14	0.12	–	0.71	0.39	0.46	0.40	0.53	–	0.60	0.56	0.47	0.58	0.54	0.50	0.63	0.54	0.38	0.60	0.65	0.51	0.57	0.61	0.54

For 1980 and 1990 data for USSR, Yugoslavia, and Czechoslovakia used for countries which then formed part of these now non-existent states

PIR personal integrity rights (CIRI database), *EMPR* empowerment rights (CIRI database), *WR* women's rights (CIRI database), *PR* political rights (Freedom House), *CL* civil liberties (Freedom House), *FP* freedom of the press (Freedom House)

* 1981 (the first available year) for PIR, EMPR, and WR; ** 2011 (the last available year) for PIR, EMPR, and WR; nf—not free; pf—partly free; f—free

Table 9 List of variables. *Source:* Own elaboration

Variable name	Description	Data source
<i>civil_society</i>	An indicator of the robustness of civil society, understood as one that enjoys autonomy from the state and in which citizens freely and actively pursue their political and civic goals	Coppedge et al. (2016)
<i>conflict</i>	A binary variable indicating the presence of an armed conflict	Gleditsch et al. (2002) as updated by Pettersson and Wallensteen (2015)
<i>constitution_time</i>	Number of years since the adoption of the given post-socialist constitution (includes provisional constitutions)	Own calculations based on Elkins et al. (2014)
<i>democracy_competition</i>	The “competition” component of Vanhanen’s Index of Democracy referring to political/electoral competition, approximated by smaller parties’ share of votes cast in parliamentary or presidential elections (or both)	Vanhanen (2000, 2016)
<i>EU</i>	Dummy variable for membership in the European Union, for countries that joined the EU in 2004	–
<i>fra_de_facto</i>	An indicator of the extent to which the freedoms of assembly and association are subject to actual governmental limitations or restrictions (as opposed to strictly legal protections), re-scaled to take values between 0 and 1 with higher values corresponding to higher <i>de facto</i> protection	Cingranelli et al. (2014)
<i>fra_de_jure</i>	Presence of either the freedom of assembly or freedom of association in the constitution for a given country-year	Elkins et al. (2014)
<i>frm_de_facto</i>	An indicator of the extent to which the freedom of (domestic) movement is subject to actual governmental limitations or restrictions (as opposed to strictly legal protections), re-scaled to take values between 0 and 1 with higher values corresponding to higher <i>de facto</i> protection	Cingranelli et al. (2014)
<i>frm_de_jure</i>	Presence of the freedom of movement in the constitution for a given country-year	Elkins et al. (2014)
<i>frr_de_facto</i>	An indicator of the extent to which the freedom of religion is subject to actual governmental limitations or restrictions (as opposed to strictly legal protections), re-scaled to take values between 0 and 1 with higher values corresponding to higher <i>de facto</i> protection	Cingranelli et al. (2014)
<i>frr_de_jure</i>	Presence of the freedom of religion in the constitution for a given country-year	Elkins et al. (2014)
<i>GDP_per_capita</i>	Log of GDP per capita	Feenstra et al. (2015)
<i>hc_de_facto</i>	An indicator of the extent to which the right of <i>habeas corpus</i> is subject to actual governmental limitations or restrictions (as opposed to strictly legal protections), re-scaled to take values between 0 and 1 with higher values corresponding to higher <i>de facto</i> protection	Cingranelli et al. (2014)

Table 9 (continued)

Variable name	Description	Data source
<i>hc_de_jure</i>	Presence of the <i>habeas corpus</i> right in the constitution for a given country-year	Elkins et al. (2014)
<i>judicial_independence</i>	<i>De facto</i> judicial independence indicator	Linzer and Staton (2015)
<i>population</i>	Log of population	Feenstra et al. (2015)
<i>prt_de_facto</i>	An indicator capturing <i>de facto</i> operation of the prohibition of torture understood as purposeful infliction of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials, re-scaled to take values between 0 and 1 with higher values corresponding to higher <i>de facto</i> protection	Cingranelli et al. (2014)
<i>prt_de_jure</i>	Presence of the prohibition of torture in the constitution for a given country-year	Elkins et al. (2014)
<i>rights_de_facto</i>	An aggregate measure of <i>de facto</i> protection of rights calculated for a given country-year as an average of <i>de_facto</i> indicators for 5 rights (<i>fra_de_facto</i> , <i>frm_de_facto</i> , <i>frr_de_facto</i> , <i>hc_de_facto</i> , and <i>prt_de_facto</i>)	Own calculations based on Cingranelli et al. (2014)
<i>rights_de_jure</i>	An aggregate measure of <i>de jure</i> protection of rights calculated for a given country-year as an average of <i>de_jure</i> indicators for 5 rights (<i>fra_de_jure</i> , <i>frm_de_jure</i> , <i>frr_de_jure</i> , <i>hc_de_jure</i> , and <i>prt_de_jure</i>)	Own calculations based on Elkins et al. (2014)

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